

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.340 of 1992

Date of decision: 12.12.2007

A.L.GandhiPetitioner
	-Versus-
State of H.P. and othersRespondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.K.D.Sood, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with
Mr.R.M.Bisht,Dy.A.G. for respondents 1
& 2.
Mr.Vikram Thakur, Advocate vice
Mr.K.L.Bali, Advocate.

Deepak Gupta, J.(oral)

The petitioner by means of this writ petition has prayed for a direction to quash the orders passed by the respondents whereby sanction has been refused to him for raising an attic in his premises known as House No.14, Gali No.9, Kashmiri Mohalla, Middle Bazar, Shimla. He has also prayed for a direction that the respondents be directed to consider the application of the petitioner and grant sanction in accordance with law.

Briefly stated the facts of the case are that the predecessor-in-interest of the petitioner first applied for permission to raise an attic in the premises in question on 19.4.1983. This application was

rejected on 27.5.1983. She filed an appeal to the State of Himachal Pradesh which appeal was rejected on 7.1.1984.

Smt.Ram Murthi predecessor in interest of the petitioner again applied for permission on 20.6.1986 but the same was rejected on 5.7.1986 on the ground that since her earlier appeal had been rejected and she had not challenged the earlier order now permission could not be granted to her.

Thereafter, on 5.1.1989 Smt.Ram Murthi again applied for construction of attic and this application was also rejected on 27.4.1989 on the same ground. Appeal filed by the petitioner before the Secretary has been rejected and hence this writ petition.

We have heard Sh.K.D.Sood, learned counsel for the petitioner and Sh.M.S.Chandel, learned Advocate General for respondents 1&2 and Sh.Vikram Thakur vice Mr.K.L. Bali for respondent No.3.

At the outset we may notice that the original petition of the petitioner having been rejected the petitioner could not have filed fresh application unless changed circumstances existed or the said order was set-aside. No material changed circumstances have been pointed out to us. Further more we are of the considered view that in view of the subsequent events which have taken place the petition cannot be allowed in any event. `

The State of Himachal Pradesh has issued a notification dated 22.8.2000 declaring the Central Part of Shimla to be a core area. Admittedly the building in question falls in the core area. In the

Core area very limited new construction is permitted and as far as old buildings are concerned they are to be re-constructed only on the old lines with the same number of storeys. It is thus obvious that in the core area of Shimla no permission can be granted to raise an extra storey or floor.

The Apex Court in *Commissioner of Municipal Corporation, Shimla vs. Prem Lata Sood and others, 2007 (7) Scale No.3, 737*, has held as follows:

“26.In view of the aforementioned amendments in the regulation declaring ‘core area’ and ‘heritage zone’ within which only the respondents had filed their application for grant of sanction of the building plans, no order could be passed by the appellant.

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38.In any event, as in the meanwhile, the period for which the building plan was sanctioned by the State had expired, the question as to whether in the aforementioned fact situation obtaining, the respondents acquired any vested right despite the amendments in the regulation by defining ‘core area’ and providing for the heritage zone is the issue, in our opinion, is misconceived.

39.It is now well-settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra.

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53.Furthermore, since special regulations have been framed in the town of Shimla, the core area as provided for in the regulation is required to be protected. The area in question has been declared to be a heritage zone, and hence no permission to raise any construction can be issued, which would violate the ecology. Such regulations have been framed in public interest. Public interest, as is well known must override the private interest.”

In view of the law laid down by the Apex Court there is no merit in the petition which is accordingly rejected. No costs.

**(Deepak Gupta),
Judge**

December 12, 2007.
PV

**(V.K. Ahuja),
Judge**